

### **III. REMARKS**

Claims 1-40 are pending in this application. By this amendment, claims 1, 10, 18, 27 and 35 and 40 have been amended. Applicants do not acquiesce in the correctness of the rejections and reserve the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicants reserve the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

In the Office Action, claims 35 and 40 are rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. Claims 1, 5, 7, 10-11, 14-15, 17-18, 22, 24, 27-28, 31-32, 34-35, 36-37, 39 and 40 are rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Cherkasova *et al.* (U.S. Patent No. 6,823,392), hereafter “Cherkasova.” Claims 2-3, 6, 19-20 and 23 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Cherkasova in view of Webb *et al.* (U.S. Patent Pub. No. 2002/0083342), hereafter “Webb.” Claims 4 and 21 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Cherkasova in view of Kubo *et al.* (U.S. Patent No. 2002/0059436), hereafter “Kubo.” Claims 12-13, 16, 29-30, 33 and 36 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Cherkasova in view of Bondarenko *et al.* (U.S. Patent No. 6,389,028), hereafter “Bondarenko.” Claims 8-9 and 25-26 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Cherkasova in view of Slotznick (U.S. Patent No. 6,011,537), hereafter “Slotznick.”

#### **A. REJECTION OF CLAIMS 35 AND 40 UNDER 35 U.S.C. §101**

The Office has asserted that claims 35 and 40 are directed to non-statutory subject matter. Specifically, the Office asserts that the claims are directed towards computer programs consisting solely of software and therefore they do not fall into any of the categories of statutory subject matter. Applicants have amended claims 35 and 40 to recite “[a] computer program product stored on a computer readable medium.” Applicant asserts that this amendment further clarifies the invention. Accordingly, Applicant requests that the rejection be withdrawn.

#### **B. REJECTION OF CLAIMS 1, 5, 7, 10-11, 14-15, 17-18, 22, 24, 27-28, 31-32, 34-35, 36-37, 39 AND 40 UNDER 35 U.S.C. §102(e)**

With regard to the 35 U.S.C. §102(e) rejection over Cherkasova, Applicants assert that the cited reference does not teach each and every feature of the claimed invention. For example, with respect to independent claims 1, 18, and 35, Applicants submit that Cherkasova fails to teach, *inter alia*, responsive to determining that said access level is currently at a desired maximum, automatically allocating to a server determined access slot, which specifies a time period during which the scarce resource may be accessed, said requester. In support, the Office cites a passage of Cherkasova that teaches enabling a web client to reserve a future time. Col. 5, lines 6-14. To this extent, in Cherkasova, the client determines the future time with its reservation. As such, the future time of Cherkasova is not server determined. In fact, the future time of Cherkasova is not automatically allocated at all, but rather is reserved by the user. Thus, Cherkasova teaches that the user reserves the time slot, and not that it is automatically allocated or server determined.

In contrast, the claimed inventions include “...responsive to determining that said access level is currently at a desired maximum, automatically allocating to a server determined access slot, which specifies a time period during which the scarce resource may be accessed, said requester.” Claim 1. As such, the requester of the claimed invention is not merely enabled to reserve a time period as is the client in Cherkasova, but instead, the requester is automatically allocated to a server determined access slot. For the above stated reasons, the access slot of the claimed invention is not taught by the reservation of Cherkasova. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

With respect to independent claims 36, 39 and 40 and dependent claims 11, 15, 17, 28, 32 and 34, Applicants respectfully submit that Cherkasova fails to teach or suggest responsive to determining that said access level is currently at a desired maximum, determining whether said scarce resource is able to accommodate immediate access by said late requester. Cherkasova has no provision for accommodating immediate access by a user that has missed or gone beyond a time period, but instead, the user in Cherkasova follows the same procedure for reserving a future time period in all cases. Col. 4, line 5 through col. 5, line 14. Specifically, Cherkasova has no provision for a user that has exceeded the allotted time. To this extent, there is no special treatment given to a user in Cherkasova who has exceeded the time period.

This Office states that “...the process disclosed by the applicant for accommodating a late request is identical to the process claimed in claim 1 and therefore is rejected for the same reasons as claim 1.” Office Action, page 4. Applicants respectfully submit that a simple look at the claims of the invention cures this misconception. For example, in claim 1 upon receipt of a request from a normal user, the claimed invention, “...responsive to determining that said access

level is at a desired maximum, automatically allocat[es] to an access slot, which specifies a time period during which the scarce resource may be accessed, said requester.” Claim 1. As such, the requestor of a regular request of the claimed invention is never granted immediate access if the access level is at a desired maximum, but instead is automatically allocated to an access slot.

In contrast, if the request is from a late user or holdover user, it is determined “...responsive to determining that said access level is currently at a desired maximum, ...whether the scarce resource can accommodate immediate access by the user to the scarce resource.”

Claim 36. Thus, the late requestor of the claimed invention may be granted immediate access even when the access level of the scarce resource is at the desired maximum. To this extent, there is an additional determination, beyond that of determining whether the access level is at a desired maximum, in the case of a late or holdover user. This distinction is further borne out in the fact that claim 11, for example, which depends from claim 1, includes processes that are distinct from those in claim 1.

As such, in contrast to Cherkasova, which has no special provision for this event, the claimed invention uses a determination, which is beyond that of determining whether the access level is currently at a desired maximum, for late requests and/or users that have gone beyond their time period than the determination that it uses for regular requests. Thus, the determining step for a late request as included in the claimed invention is not taught by the reservation of a time period in Cherkasova. Accordingly, Applicants request withdrawal of this rejection.

With respect to dependent claims 10 and 27, Applicants respectfully submit that Cherkasova does not teach that determining whether said access level for said scarce resource is at a desired maximum consists of: tracking the number of users currently accessing the scarce

resource; and comparing said number with a predetermined maximum value. Rather, Cherkasova teaches a variety of factors for determining whether sufficient resources are available to provide an adequate level of service to the new sessions including: measuring the CPU utilization, measuring the utilization of the network pathway, measuring the utilization of a storage subsystem, measuring the percentage of new sessions refused and a combination of these measurements. However, none of these measurements of Cherkasova is taught as consisting of tracking the number of users currently assessing and comparing that number with a predetermined maximum value. To this extent, nowhere does Cherkasova teach that a desired maximum for access to a scarce resource is determined solely by a comparison of a predetermined maximum value and a tracked number of users currently assessing the scarce resource. Accordingly, Applicants request that the Office withdraw its rejection.

With regard to the Office's other arguments regarding dependent claims, Applicants herein incorporate the arguments presented above with respect to independent claims listed above. In addition, Applicants submit that all defendant claims are allowable based on their own distinct features. However, for brevity, Applicants will forego addressing each of these rejections individually, but reserve the right to do so should it become necessary. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

## **B. REJECTION OF CLAIMS UNDER 35 U.S.C. §103(a)**

With regard to the 35 U.S.C. §103(a) rejections, Applicants submit that each claim in the rejections includes at least one of the features of the above claims and/or depends from one of the above claims. As such, Applicants herein incorporate the arguments presented above.

Furthermore, Applicants submit that all defendant claims are allowable based on their own distinct features. Since the cited art does not teach each and every feature of the claimed invention, Applicants respectfully request withdrawal of this rejection.

#### **IV. CONCLUSION**

In addition to the above arguments, Applicants submit that each of the pending claims is patentable for one or more additional unique features. To this extent, Applicants do not acquiesce to the Office's interpretation of the claimed subject matter or the references used in rejecting the claimed subject matter. Additionally, Applicants do not acquiesce to the Office's combinations and modifications of the various references or the motives cited for such combinations and modifications. These features and the appropriateness of the Office's combinations and modifications have not been separately addressed herein for brevity. However, Applicants reserve the right to present such arguments in a later response should one be necessary.

In light of the above, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,



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